42-SBE-011

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WAKEFIELD BUILDING, INC.)

O P I N I O N

This appeal is made pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Wakefield Building, Inc., to his proposed assessment of additional tax for the taxable year ended December 31, 1937, in the amount of $140.94.

The proposed assessment resulted from the disallowance by the Respondent of a deduction claimed by Appellant under Section 8(e) of the Act in the amount of $6,552, as a debt "ascertained to be worthless and charged off within the income year." It appears that on March 31, 1925, Appellant leased certain business premises in the City of Oakland, California, to Frank J. Woodward for the term of 117 months, commencing on May 1, 1925, and ending on January 31, 1935; that on September 1, 1925, Woodward assigned the lease of G. M. McElhinney, who assumed the obligations of the lease and occupied the premises until the expiration of the term; and that on December 31, 1932, there was due Appellant under the provisions of said lease the sum of $12,008.14, of whic the above amount of $6,552 represented rent for the year 1932. During the following three years payments aggregating $4,711.58 were made by McElhinney, which payments were applied by the Appellant against the rental for the year 1931, leaving unpaid the entire amount of the 1932 rental. The Appellant maintains that.this amount was a proper deduction for the year 1936 by reason of the fact that during that year the period within which to enforce the collection of the 1932 rentals expired.

The Respondent does not deny that this indebtedness was worthless during the year 1936 but takes the position that by reason of circumstances known to Appellant it actually became worthless in a prior year, and therefore does not constitute a proper deduction for the year 1936. Although a taxpayer will not be allowed a deduction for a worthless debt if in a previous year he had no reasonable ground for believing it to be of any value (Avery v. Commissioner, 22 F. (2d)(6), the statute does permit him, in determining the fact of worthlessness, to exercise his discretion, provided he does so fairly and honestly. Person Construction Co. v. Commissioner, 116 F. (2d) 94; Sabath v. Commissioner, 100 F. (2d) 569, 571; Duffin v. Lucas, 55 F. (2d) 8 , 795. If he has a reasonable expectation that the debt, or any part of it, may be paid, he is under no duty to charge it off, Commissioner v. MacDonald Engineering Co., 102-F. (2d) 942; W. G. Duncan Coal Co. v. Glenn, 36 F. Supp. 834; Samuel Hamburger,

Inc., Board of Equalization, June 22, 1938; Arbud Investment Co., Board of Equalization, December 14, 1938. It appears here that at all times prior to 1936 the lessee was doing business in the City of Oakland, and in our opinion it was not unreasonable for the Appellant to expect that some substantial amount would ultimatedly be paid on account of the 1932 rentals. It has been specifically held that the deduction of a debt as worthless is not precluded merely because in a previous year the individua obligated were without recoverable assets. Sabath v. Commissioner, supra.

O R D E R

Pursuant to the views expressed in the opinion of the Board in this proceeding, and good cause appearing therefor,

IT Is HEREBY ORDERED, ADJUDGED AMD DECREED that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Wakefield Building, Inc., to a proposed assessment of additional tax in the amount of $140.94 for the taxable year ended December 31; 1937, pursuant to Statutes of 1929, Chapter 13, as amended, be and the same is hereby reversed. Said ruling is hereby set aside and the said Commissioner is hereby directed to proceed in conformity with this order.

-Done at Sacramento, California, this 7th day of July, 1942, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
Geo. R. Reilly, Member
Harry B. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary